Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD
AND EAST CARROLL PARISH POLICE JURY,
Petitioners,

v.

STEWART MARSHALL,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

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August 28, 1975

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OPINION BELOW

The en banc opinion of the Court of Appeals (Pet. for Cert. pages 43-79) is reported at 485 F.2d. 1297. The panel decision of the Court of Appeals (Pet. for Cert. pages 27-42) is reported at 467 F.2d 1381. The findings and decree of the District Court may be found at pages 95-97 of the appendix and pages 23-26 of the petition for certiorari.

JURISDICTION

The en banc judgment of the Court of Appeals was entered September 12, 1973. The petition for

certiorari was timely filed on December 3, 1973, and was granted June 30, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254(1)

QUESTION PRESENTED

Does an electoral plan for local public bodies, police jury and school board, which calls for at large elections from residence districts, invidiously discriminate against black citizens of the parish in violation of their Fourteenth and Fifteenth Amendment rights where black citizens constitute at least 58.7% of the population; the number of black and white registered voters is approximately equal and the District Court specifically found such election plan to be nondiscriminatory in practice?

STATUTES INVOLVED

The statutes and constitutional provisions involved in this case are the Fourteenth and Fifteenth Amendments to the Constitution of the United States of America; 42 U.S.C. 1973(c); Louisiana Revised Statutes Title 33, Section 1221 (La. Act 445 of 1968); Louisiana Revised Statutes Title 17, Section 71.1 through 71.6 (La. Act 561 of 1968).

STATEMENT

East Carroll Parish is a small rural, agriculturally oriented, parish in the north central portion of Louisiana. According to the 1970 United States Census, it had a total population of 12,884 persons of which number 7,568, or 58.7% are black and 5,306, or 41.3%, are white. (App. 95-96). It has only one in-

corporated town, the town of Lake Providence, with a population of approximately 6800 persons with approximately 62% thereof being black.

The police jury is the parish (county) governing body having jurisdiction and responsibility over such things as roads, bridges, drainage, etc. The school board has jurisdiction and responsibility only for the operation of a parish-wide public school system. Each of these public bodies is composed of nine members with one member elected from, and required to be a resident of, each of six wards, or election districts, and three elected from, and required to be residents of, one ward or election district. However, all members of each body must run at large, parish-wide, so that every citizen and registered voter of East Carroll Parish has an opportunity to vote for each and every member of the police jury and school board.

Jurisdiction of the District Court was invoked by the original plaintiff because of a question arising under the Fourteenth Amendment to the United States Constitution. (App. 1-26)

The jurisdiction of the District Court was invoked by intervenor-respondent because of questions arising under the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965. (App. 63-74)

Prior to 1968 the parishes (counties) of Louisiana were divided into geographical wards. The members of the governing authority of the parish, the police jury, were elected from those wards according

to a population formula. LRS 33:1221, 1222, 1223, and 1224. At the same time, LRS 17:52 provided, with respect to the school board in each parish, that the voters of each police jury ward would elect a member of the school board for such parish for each police jurior in said ward.

However, when the Louisiana Legislature convened in May of 1968, both the Louisiana School Boards Association and the Police Jury Association, anticipating the need to reapportion under applicable decisions of this Court, proposed legislation to amend and/or repeal the existing statutes so as to permit each school board and police jury to reapportion itself in accordance with law.

As a result, the Louisiana Legislature of 1968 adopted Act 445 repealing the above referred to provisions relating to police juries and replaced them with basically one provision which permitted the police jury to reapportion itself and to determine the number of members it would have and how they would be elected. (LRS 33:1221) (Cert. Pet., App. D. p. 81) The Legislature likewise adopted Act 561 of 1968 also repealing the above quoted sections relative to school boards and replacing it with a thorough revision (LRS 17:71.1 through 71.6) permitting school boards to reapportion themselves completely independent of the police jury and gave them permissive authority to utilize at large elections. (Cert. Pet., App. E. p. 83)

These two acts became effective on July 20, 1968, prior to the original complaint being filed in this case.

Pursuant to this authorization, the East Carroll Police Jury appointed a reapportionment committee to study the reapportionment of that body. However, before that body could decide how it wanted to reapportion itself, the original complaint was filed herein in July, 1968, contending that the two bodies were malapportioned and requesting the District Court to order their reapportionment.

As a result of this complaint the District Court enjoined the upcoming election and ordered both bodies to submit constitutionally acceptable reapportionment plans to it. (App. 41-46) Subsequently, the East Carroll Parish Police Jury submitted to the Court a reapportionment plan, concurred in by the School Board, providing that one resident police juror and one resident school board member would be elected from each of Wards 1, 2, 4, 5, 6 and 7, and three police jurors and three school board members from Ward 3, but with all members of the Police Jury and School Board to run at large throughout the entire parish. (App. 56-57) This plan of reapportionment was approved by the District Court on December 2, 1968, with subsequent elections to be held in accordance therewith. (App. 50-51)

Subsequent thereto, on June 26, 1969, and September 10, 1969, the Attorney General of the United States notified the Attorney General of Louisiana that he was interposing an objection to Acts 445 and 561 of the 1968 Legislature, indicating that his objection was directed at that feature of the act which would permit multi-member districts. Also, on August 7,

1970, the Attorney General advised the East Carroll Police Jury that it could not implement its reapportionment plan because of his objection entered to Acts 445 and 561 which rendered such enabling legislation inoperable under *Dyer v. Love*, 307 F.Supp. 974 (1969), even though the District Court had approved and ordered implementation of the plan prior to the Attorney General's objection. (App. 58-59) (App. 75, 83-85, 90-99)

The Louisiana School Boards Association immediately pointed out to the Attorney General that since any reapportionment plan of any local political subdivision must be submitted to him for approval, any discriminatory use of the at large feature of the state act could be objected to by him at that time and that it was not objectionable until used in a discriminatory manner by some school board. Although discussions with the Attorney General in early 1970 left us expecting official withdrawal of his objections to the enabling legislation, it was not until after further discussion and correspondence that the Attorney General officially withdrew his objection by letter of April 14, 1972.

In the meantime, the District Court on its own motion on February 17, 1971, requested the Police Jury and School Board to resubmit reapportionment plans based upon the official 1970 census. Pursuant to that request, on March 11, 1971, each body resubmitted the same plan previously approved, as the 1970 census figures did not change the deviation or render

the previous reapportionment plan defective in any way. (App. 60-62)

On May 6, 1971, respondent, Stewart Marshall, intervened in this matter alleging that the at large system of elections violated his rights and others similarly situated by diluting the voting strength of black voters in East Carroll Parish in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. 1971, et seq., and because the reapportionment plan was contrary to the laws of Louisiana in that the Attorney General's objection voided Acts 445 and 561 and there was, therefore, no authority for at large elections. Intervenor filed two alternate plans for reapportionment, both of which consisted of both single and multi-member districts. (App. 63-74) The District Court ordered the Police Jury and School Board to file alternative plans, which they did, although reiterating their beliefs that the existing at large system was the best. (App. 77-82 & 86)

The original plaintiff did not participate in any proceedings in this case subsequent to the above intervention. The Governor of Louisiana and other state officials were only nominal parties in interest and have also not participated in these proceedings.

On July 29, 1971, the District Court held a hearing during which intervenors presented statistical evidence and witnesses who testified that in their opinion the at large plan was discriminatory as to blacks and would dilute their voting strength. The substance of

their testimony was that, in their personal opinion, even though blacks constituted 58.7 percent of the population of the parish, they might not all vote for a black candidate; and, therefore, blacks might not get elected. The District Court also had before it opposing testimony of persons who testified as to the benefits to be derived from the at large system. In addition, the District Court also had before it the fact that two black members of the Police Jury had voted for the at large proposal although the black member of the School Board had voted against it. (App. 100-180)

After considering all of the evidence, statistics, testimony of witnesses and all of the plans presented, the District Court on August 2, 1971, issued its order and judgment reapproving the previously approved at large plan and setting forth the following seven specific findings of fact (App. 95-97):

1. That according to the 1970 U.S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.

2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by

East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan presents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population.

Findings 1, 2 and 6 dealt primarily with the one-man,

one-vote rule *but* findings 3, 4, 5 and 7 dealt specifically with the question of dilution of the strength of black voters and clearly found that there was no *proof* of discrimination or dilution, that the plan in operation had not operated to discriminate or dilute black voting strength, and that the other plans diluted the black population of different areas within the parish significantly greater than the plan offered by the Police Jury and School Board.

Respondent then noticed his appeal to the Fifth Circuit Court of Appeals on August 9, 1971. (App. 98-99). The panel of the Court of Appeals which originally heard this case affirmed the District Court by a two-to-one vote, 467 F.2d 1381. Respondent Marshall then applied for a rehearing en banc which was granted. While this matter was pending before the en banc Court of Appeals, that Court specifically requested the defendant public bodies to submit to it current voter registration statistics which they did. As shown by the en banc opinion, 485 F.2d 1297, at 1301 there were, as of October 6, 1971, 3,342 white registered voters and 2,899 black registered voters.

According to the registrar of voters for East Carroll Parish, his voter registration rolls now reflect the following registration as of July 31, 1975:

White Democrats	3,470	Black Democrats	3,514
White Republicans	46	Black Republicans	16
White Other	17	Black Other	20
Total White Registered Voters	3,533	Total Black Registered Voters	3,550

Total registered voters—7,083

In addition, as stated in the dissenting opinion of Judges Clark, Dyer, Lewis R. Morgan and Roney, Circuit Judges, 485 F.2d 1297, at 1314:

> ". . . The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. A third black candidate won in his contest against the incumbent president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election.
>
> In the 1972 election which was held for only three of the nine school board posts, two blacks and one white candidate were elected. . . ."

Under Louisiana law, school board members are elected for six year terms and one-third of the members of a school board stand for election every two years. L.R.S. 17:71.2 (cert. pet. App. E, page 83). Such school board elections are held at the time of congressional elections in even numbered years. All police jury members stand for election at the same time for four year terms held in odd numbered years. Consequently, there were no police jury elections in 1972, and only three of the nine school board members stood for election that year.

Also, the officials of the town of Lake Providence which is located in Ward 3 (the only multi-membered district ward, electing three members) and which, as

noted heretofore, contains approximately 50% of the total population of the parish and which is approximately 60% black, are also elected at large. Presently, the town of Lake Providence has a black mayor and all five of its aldermen are black. In addition, in 1974, while this matter was pending on certiorari, the respondent herein, Stewart Marshall, was elected, at large, to the position of City Marshall.

However, the Fifth Circuit Court of Appeals, sitting en banc, by a nine-to-six split decision, on September 12, 1973, reversed the decision of the panel of that Court and vacated and remanded the judgment of the District Court for proceedings consistent with their disposition. A stay was granted pending certiorari which was timely filed on December 3, 1973, and granted by this Court on June 30, 1975.

ARGUMENT

We respectfully submit that the decision of the Court of Appeals, en banc, is in direct conflict with the principles enunciated and established by this Court for determining the constitutionality of reapportionment and election plans by this Court's decisions in *Reynolds v. Simms*, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964), *Dusch v. Davis*, 387 U.S. 112, 18 L.Ed.2d 656, 87 S.Ct. 1554 (1967); *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965); *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed. 2d 298 (1973); *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Chapman v. Meier*, U.S. , 42 L.Ed.2d 766, 95 S.Ct. (January 1975); and particularly *Dallas County*

v. Reese, U.S. , 44 L.Ed.2d 312, 95 S.Ct. , (May 19, 1975).

The instant decision of the Court below is also inconsistent with the principles utilized by it in other of its decision such as *Davis v. Thomas County*, 380 F.2d. 93 (1967); *Howard v. Adams County Board of Supervisors*, 453 F.2d. 455 (1972); *Perry v. City of Opelousas*, 515 F.2d. 640 (1975); *Wallace v. House*, 515 F.2d. 619 (1975) and particularly *Bradas v. Rapides Parish Police Jury, et al*, 508 F.2d. 1109, (1975).

The basic principles laid down by the above cited decisions of this Court as those which should be considered by Federal Courts in determining the constitutionality of reapportionment or electoral process plans under the Fourteenth and Fifteenth Amendments to the United States Constitution are (1) multi-member districts are not per se unconstitutional,; (2) where the Federal Courts are forced to fashion reapportionment plans because the appropriate legislative body fails to indicate a preference, single member districts are generally preferred; (3) that constitutional requirements are not as stringent for local political subdivisions as they are for legislatures or congressional districts; (4) that reapportionment is primarily a legislative responsibility and function and the desire of the public body with respect thereto should be given preference; (5) plaintiffs in these suits carry the burden of proving invidious discrimination; (6) the findings and conclusions of the District Court should be given great weight; (7) at large election from resi-

dence districts are constitutional absent findings in a particular case that a plan in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population. We respectfully submit that the District Court followed these principles, as did the panel decision of the Court of Appeals, but that the majority opinion in the en banc decision did not.

Even though reapportionment in East Carroll Parish became a law suit, it can be said that the District Court was not forced to fashion its own reapportionment plan as the public bodies responsible for reapportionment had commenced that process prior to the filing of the original suit in 1968. Be that as it may, however, the District Court did have before it a plan preferred by the legislative bodies and to which he gave preference. In 1971, when the Court on its own motion requested the two public bodies to reconsider their reapportionment based upon the just then available 1970 United States census, they immediately did so on March 12, 1971, expressing to the Court their belief that the existing at large, residence district plan was preferable. (App. pages 60-62). Once again the District Court had before it an expressed legislative preference. In addition, the District Court had before it evidence of the actual operation of the at large, residence district, plan in elections the preceeding year, 1970, in which blacks actively and effectively participated. As pointed out in the dissenting opinion of Judges Clark, Dyer, Morgan and Roney, in the en banc decision, 485 F.2d 1297 at 1311:

> ". . . The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for the Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. *A third black candidate won in his contest against the incumbent president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election. . .*" (Emphasis added)

Respondent Marshall did not intervene, raising the Fifteenth Amendment dilution question until May 6, 1971, some two months after the two legislative bodies had responded to the District Court's request regarding reconsideration in light of the 1970 census. The District Court held a lengthy hearing, primarily on the question of dilution, on July 29, 1971, and thereafter on August 2, 1971, issued its opinion and order approving continuation of the at large plan with the following specific findings (App. 95-97):

> ". . . 1. That according to the 1970 U. S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.
>
> 2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan represents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population. . . ."

The panel of the Fifth Circuit which originally heard the appeal apparently gave considerable weight to the specific and detailed findings of the District Court as did this Court in *White v. Regester*, 412 U.S.

755, 37 L.Ed 2d 314, 93 S.Ct. 2332 and affirmed.

However, and in spite of the fact that four of the seven findings of the District Court, findings 3, 4, 5 and 7, specifically dealt with the question of dilution and specifically found no proof of discrimination or dilution (App. page 96), a majority of the Court below sitting en banc (with six members filing dissenting opinions) apparently seized on the rather minute fact that there were slightly less black registered voters than white registered voters as of October 6, 1971, (2,899 black—3,342 white) as the pivotal point to justify its disregard of the District Court's specific findings to the contrary. *Zimmer v. McKeithen*, 485 F.2d 1297 at 1301, 1306.

In addition to reversing the District Court on its findings of fact without any finding whatsoever of an abuse of discretion by the District Court, the majority in the en banc decision virtually refused to consider the additional fact that in actual operation the at large residence district plan had not operated ". . . to dilute the voting strength of an identifiable element of the voting population. . .". *Dallas County v. Reese*, U.S. , 44 L.Ed.2d 312, 95 S.Ct. at 315. In 1972, three of the nine seats on the school board were up for election. Two of the three seats were won by blacks. Can such election results, winning two out of three seats, possibly be evidence,

> ". . . .that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents

> in the districts to participate in the political processes and to elect legislators of their choice..." *White v. Regester* at 324,

or evidence that this plan "...in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population..."? *Dallas County v. Reese*, supra at 316. It might be one thing if the District Court here had disregarded the actual operation of the plan and found dilution. But that is not the case. The District Court here, "...based on the totality of the circumstances,..evolved its ultimate assessment..." of the at large residence district plan and concluded that it would not invidiously discriminate against black citizens of East Carroll Parish. The District Court's "...intensely local appraisal of the design and impact of..." the at large residence district plan, "....in the light of past and present reality, political and otherwise..." should not have been disturbed. *White v. Regester*, 37 L.Ed.2d at 326.

The Court below, itself, has in almost every instance followed the principles laid out by the decisions of this Court in these cases. It has generally given great weight to the findings and conclusions of the District Court regardless of whether the District Court had directed implementation of a single member district plan or a multi-member district plan. See *Bryant v. East Baton Rouge Parish School Board*, 466 F.2d 519, (1972) per curiam opinion affirming District Court's approval of a three district multi-member district plan with at large elections. In two recent decisions the court below affirmed the District Court's findings of dilution and his approval of a basic single member plan in *Perry v. City of Opelousas*, 515 F.2d 640, and *Wallace v. House*, 515 F.2d. 619, although in *Wallace v. House* it reversed the District Court in part for failing to defer to the legislative preference for an at large feature. The Court below has also followed the principle that the plaintiff bears the burden of proving "invidious discrimination" and "unconstitutional dilution" in another recent decision, *Bradas v. Rapides Parish Police Jury, et al*, 508 F.2d. 1109, (February 1975). It reversed the District Court's finding of unconstitutional dilution and substitution of a single member district plan for an eighteen member multi-member district plan, ordering the multi-member district plan (one district which elected ten members to both the police jury and school board had only 37% black population) reinstated on the grounds that the black plaintiffs *had not carried their burden* of showing invidious discrimination and dilution of the minority voting interests. This was in spite of evidence in the record that no black had ever been elected to either body in the history of Rapides Parish. Obviously, the plaintiffs in *Bradas* made out a much better case for discrimination and dilution than have the plaintiffs here where blacks have consistently and effectively participated in the political process and been elected to office on both public bodies ever since the plan was put into operation.

We respectfully submit that applying the heretofore mentioned principles enunciated and established

by decisions of this Court to the facts of this case—black citizens constituting 58.7% of the total population of the parish; the number of black registered voters being approximately equal to the number of white registered voters (black registration now slightly ahead); black citizens having consistently been nominated and elected to both public bodies since the at large-residence district plan was implemented by the District Court; the District Court having made specific findings of no invidious discrimination against black citizens and voters and no dilution of black voting interests; virtually all of the elected officials (the mayor, all five aldermen, and the city marshall) of the only incorporated town in the parish which contains approximately 50% of the total population of the parish, are black and were elected at large—the en banc decision of the Court below must be reversed.

We would also respectfully submit that the recent decision of this Court in *Dallas County v. Reese*, U.S. , 44 L.Ed.2d 313, 95 S.Ct. , decided May 19, 1975, is on all fours with the instant case and is controlling. The same type of electoral plan was involved—at large elections but with district residence requirements. The issue was the same—does such a plan operate to minimize or cancel out the voting strength of identifiable racial or political elements of the voting population. In neither case has the at large-residence district plan been proven to invidiously discriminate or minimize or cancel out the voting strength of identifiable racial or political elements of the voting population. The only difference is that the position of

the public bodies in the case at bar is stronger because the electoral plan here has proven to be non-discriminatory in actual operation. This Court should so hold.

CONCLUSION

For the reasons stated, it is respectfully submitted that the en banc judgment of the Court of appeals should be reversed and the judgment of the panel of the Court of appeals and the District Court should be affirmed and reinstated.

Respectfully Submitted,

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CERTIFICATE

I, John F. Ward, Jr., attorney for petitioners and a member of the Bar of the United States Supreme Court, do hereby certify that on this 28th day of August, 1975, I served copies of the foregoing Brief of Petitioner on the attorneys of record for respondent herein, Mr. Stanley A. Halpin, Jr., and Mr. George M. Strickler, Jr., by mailing three copies of same, postage prepaid, to them at their offices at 906 Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana, 70130.

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